

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 7007**

**BILL NUMBER:** SB 356

**NOTE PREPARED:** Feb 23, 2010

**BILL AMENDED:** Feb 22, 2010

**SUBJECT:** Professional Licensing.

**FIRST AUTHOR:** Sen. Delph

**FIRST SPONSOR:** Rep. Welch

**BILL STATUS:** CR Adopted - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

*Attorney General and Health Records-* The bill establishes procedures for the Attorney General to seize, secure, store, and destroy abandoned or at-risk health records and other records containing personally identifying information. The bill creates the Health Records and Personal Information Protection Trust Fund (HRPIPTF) to pay for costs associated with securing and maintaining the records.

*Home Health Agency Criminal Checks-* The bill allows a criminal history check for employees of home health agencies and personal services agencies to be provided through a private agency. The bill removes the July 1, 2010, expiration that allows limited criminal histories to be used for employees of home health agencies and personal services agencies.

*Uniform Cease and Desist-* The bill establishes a uniform procedure to allow a board of a regulated occupation to issue a cease and desist order to an unlicensed person who engages in an activity that requires a license. The bill repeals and makes conforming changes concerning cease and desist and injunction orders.

*Merger of Barbers and Cosmetologists-* The bill merges and changes membership on the Cosmetology and Barber Boards.

*Relocation of Barber Statutes-* The bill relocates barber statutes.

*Practice As or Use of Title: "Social Worker"-* The bill prohibits a person from professing to be a social worker unless the person is licensed as a social worker.

*Mental Health Counselor Associate License-* The bill establishes a mental health counselor associate license.

*Water Well Pump Installer License-* The bill establishes a water well driller and water well pump license. The bill prohibits a person from installing a water well pump unless the person is licensed.

*Continuing Education for Water Well Driller and Pump Installers-* The bill establishes a continuing education requirement for a water well driller and water pump installer licensee.

*Elimination of Controlled Substances Advisory Committee-* The bill eliminates the Controlled Substances Advisory Committee (CSAC) and transfers responsibilities to the Indiana Board of Pharmacy.

*Revocation of CSR-* The bill provides for automatic revocation of controlled substances permit if a physician's license is revoked. (Current law requires a separate administrative process to take place if physician's license is revoked.)

*Dispensing of Controlled Substance-* The bill provides that a controlled substance may not be dispensed to a person who is not personally known to the pharmacist, pharmacy technician, or person authorized by a pharmacist to dispense a controlled substance unless the person taking possession of the controlled substance provides documented proof of the person's identification.

*INSPECT Provisions-* The bill requires the Indiana scheduled prescription electronic collection and tracking program's (INSPECT) data base to include information on a controlled substance recipient's method of payment for the controlled substance dispensed. The bill allows INSPECT information to be released to the following: (1) state toxicologist; (2) the Medicaid retrospective and prospective drug utilization review program; and (3) a substance abuse assistance program for certain licensed health care providers. The bill provides criminal and civil immunity for a practitioner who in good faith provides information to a law enforcement agency based on a report from INSPECT. The bill requires certain boards to establish prescribing norms and dispensing guidelines for the unsolicited dissemination of INSPECT exception reports to certain persons.

*Repeal of Environmental Health Specialists and Hypnotists-* The bill repeals laws concerning the certification of environmental health specialists and licensure of hypnotists.

*Paramedic Licensure Study-* The bill requires the Health Finance Commission to study the issue of paramedic licensure.

*Conforming Changes-* The bill makes conforming changes.

**Effective Date:** June 30, 2010; July 1, 2010.

**Explanation of State Expenditures:** (Revised) *Attorney General and Health Records-* If the AG took possession of medical documents, the AG could require additional expenditures in order to store them and notify persons that their medical records have been taken into possession. Medical records would have to be maintained in a depository for the lesser of either three years or the remaining time on the storage of the records by a private medical professional in current law. This provision could be carried out only to the extent that the existing resources of the AG would allow.

*Home Health Agency Criminal Checks-* This bill will result in a continuance of the number of limited

criminal history background checks performed in the state for employees of home health agencies and personal service agencies who have lived in the state for two years or more.

Currently, code provisions that require home health agency and personal service agency employees to obtain limited criminal history background checks if they have lived in the state for two or more years exist until June 30, 2010. After this date, all employees of home health agencies and personal service agencies will be required to obtain a national criminal history background check.

The bill also adds that employees of home health agencies and personal service agencies who have lived in the state for less than two years may obtain either a national criminal history background check or an expanded criminal history background check.

An expanded criminal history check includes a search of: (1) all the records maintained by all counties in Indiana and (2) the records maintained by all counties or similar government units in another state if the individual resided in another state in which the individual who is the subject of the investigation resided.

A national criminal history background check means a search of the criminal history background system maintained by the Federal Bureau of Investigation (FBI) based on fingerprint identification or any other method of positive identification. A national criminal history background check satisfies the requirements of the expanded criminal history background check, but an expanded criminal history background check may not satisfy the requirements of the national criminal history background check (depending on the search methods of the background check administrator).

This bill may minimally affect the workload of the Indiana State Police and the Indiana Office of Technology because of the background check provisions. However, these provisions are not expected to affect staffing levels.

*Uniform Cease and Desist*- This provision may generate a minor increase in expenditures for the AG if more investigations involving professional licensees occur. Under current law, the AG already investigates complaints of the licensed professions and can currently enjoin an individual found in violation of licensing law.

The Professional Licensing Agency (PLA) is currently able to, or in conjunction with the AG, impose cease and desist orders on various professionals. This provision should affect PLA expenditures minimally.

*Merger of Barbers and Cosmetologists, Elimination of Controlled Substances Advisory Committee, & Repeal of Environmental Health Specialists and Hypnotists*- The proposed elimination and mergers of these boards would present a savings to state expenditures in the form of reduced salary per diem, mileage, hotel, staff, and materials cost. However, the following table provides estimates of savings only, as the PLA does not tabulate board costs separately at this time. The estimated savings assume full attendance at meetings, hotel stays, average round trip mileage of 150 miles, and staff costs for a 7.5-hour full meeting day.

<b>Table. A. Estimated Expenditure Savings- Merger of Barber Board with Cosmetology Board, Elimination of CSAC, and Repeal of Dietician and Hypnotist Committees.</b>	
Board Member Per Diem, Travel, Lodging, and other Expenses	\$22,837
Agenda Packet Preparation	\$600
Mailing of Packets	\$1,320
Staff Meeting Time	\$3,985
<b>TOTAL ESTIMATED SAVINGS</b>	<b>\$28,742</b>

The number of board members of the proposed Cosmetology/Barber Board would remain the same as the current Cosmetology Board.

With respect to the eliminated boards (Controlled Substances Advisory Committee, Hypnotists, and Environmental Health Specialists), the Controlled Substances Advisory Committee's duties would be given to the Pharmacy Board. Licensing or certification of hypnotists and Environmental Health Specialists would cease in Indiana as a result of this provision. (See *Explanation of State Revenues*.)

*Revocation of Controlled Substances Permit-* This provision would speed up the process of removing a controlled substances permit certification from a person that has had their professional license revoked. The process, along with the elimination of the Controlled Substances Advisory Committee, should reduce the administrative expense to process two separate revocation proceedings.

*INSPECT Provisions-* The amount of modification or expense that would be needed to adjust the INSPECT database to record the method of payment by a controlled substance recipient's purchase is currently indeterminable.

*Mental Health Counselor Associate License-* Given that the PLA currently processes mental health counselor licenses, it is likely that this provision would not require more than a negligible increase in expenditures to carry out. The main cost would likely be the development of an exam, if a standard exam is not adopted by the Behavioral Health Board.

(Revised) *Water Well Pump Installer License-* The bill provides that the Department of Natural Resources (DNR) must issue a water well pump installer license to qualified individuals. The DNR currently issues licenses for water well drillers. Any additional expenses incurred by the DNR for the issuance of water well pump installers could be paid for by license fees.

(Revised) *Continuing Education for Water Well Driller and Pump Installers-* This provision requires a water well pump installer and a water well driller to complete six hours of continuing education every two years. The bill establishes procedures for the DNR to approve continuing education courses. An institution, organization, governmental agency, or individual that wishes to offer continuing education courses must apply in writing and submit certain information to the DNR for approval of each course. The DNR must maintain and make available to the public a list of future continuing education courses that will satisfy the continuing education requirements. A license holder may apply in writing to the DNR for a waiver or

modification of the continuing education requirements under certain conditions. The bill allows the DNR to enter into a contract with the IGWA to administer the continuing education program. Expenses associated with the program could be minimal and will depend on arrangements the DNR makes with the IGWA or other qualified entities to provide the education.

Competency Exam- In consultation with the IGWA, the DNR must prepare one or more competency examinations to determine whether an applicant for a water well pump installer license is qualified. Expenses associated with the exams could be paid with exam fees set by the DNR director.

**Explanation of State Revenues:** (Revised) *Attorney General and Health Records-* This provision would set up the Health Records and Personal Information Protection Trust Fund (HRPIPTF) to fund the AG's expenditures to carry out health record seizure, storage, and maintenance as required under the bill. Revenue would come from a \$5 fee to be assessed along with every disciplinary order imposed on a person by a professional board.

The amount of revenue this provision could generate in a given year is indeterminable and would depend on the number of disciplinary orders handed down by professional boards in the future. However, the HRPIPTF would be capped at \$75,000. If the HRPIPTF exceeded \$75,000, imposition of the \$5 fee would cease until the fund balance went below \$75,000. The AG would administer the HRPIPTF. Revenue in the HRPIPTF would not revert to the state General Fund at the end of a state fiscal year.

*Home Health Agency Criminal Checks-* This provision would result in continued revenue receipts from limited criminal history background requests for employees who have lived in the state for more than two years. Depending on the method used to request a limited criminal history background check, revenue to the IOT Portal Fund and the General Fund may increase. For every limited criminal history background check requested, \$7 is forwarded to the General Fund. If a limited criminal history background check is requested online using AccessIndiana, either \$8 or \$9.32 (depending if the requestor is an AccessIndiana member or not) is deposited in the IOT Portal Fund.

The provision may also result in decreases in state revenue to the extent employees who have lived in the state for less than two years elect to request an expanded criminal history background check rather than a national criminal history background check.

For every national criminal history background check performed in the state, \$15 is forwarded to the General Fund. Decreases in state revenue will ultimately depend on (1) any price difference between an expanded criminal history background check and a national criminal history background check and (2) if one method to request criminal history information is more accessible than another. It is assumed that if one type of criminal history background check is less expensive than another, the cheapest alternative will be selected by the requestor. Additionally, if one method to request criminal history information is easier to access, or requires less time than another, it was assumed that a more accessible method may also be preferred to the other. Any impact these factors may have on requests for national criminal history information and state revenue is indeterminable.

*Merger of Barbers and Cosmetologists, Elimination of Controlled Substances Advisory Committee, & Repeal of Environmental Health Specialists and Hypnotists-* Given no changes to fee structure or regulation within the proposed merged boards, revenue from licensing fees for barbers should continue as currently collected.

The complete deregulation of hypnotists and environmental health specialists would lead to a reduction in

revenue. The following table illustrates the amount of revenue collected over the last two state fiscal years by each of these professional licenses.

<b>Table B. Fee Revenue from Hypnotist and Environmental Health Specialists FY 2008 - 2009.</b>		
<b>Profession</b>	<b>FY 2008 Revenue</b>	<b>FY 2009 Revenue</b>
Hypnotists	\$5,525	\$1,110
Environmental Health Specialists	\$5,515	\$3,315
<b>TOTAL</b>	<b>\$11,040</b>	<b>\$4,425</b>

Both licensed hypnotists and environmental health specialists hold two-year licenses.

(Revised) *Practice As or Use of Title: "Social Worker"*- The use of the title of or practice as a "social worker" would constitute a Class A misdemeanor under current statute. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

(Revised) *Dispensing of Controlled Substance*- A violation of this provision would, under current law, constitute a Class A misdemeanor. See above for explanation of Class A misdemeanor to state revenues.

(Revised) *Water Well Pump Installer License*- This provision requires that a person must be licensed by the DNR in the field of water well pumps to install or repair water well pumps or water well pumping equipment. An application for a license must be accompanied by a license fee of \$100. Currently, there are 500 licensed water well drillers with about 500 water well plumbers. If the 500 plumbers applied for a pump installers license, revenue generated by the fee would equal \$50,000 every two years. Fee revenue would be deposited into the state General Fund.

*INSPECT Provisions*- This provision would give criminal and civil immunity to a practitioner that in good faith reports information from an INSPECT report to a law enforcement agency. As a result, this provision could reduce the number of lawsuits filed against practitioners. If fewer lawsuits occur, state General Fund revenue from court filing fees would be reduced.

*Mental Health Counselor Associate License*- The impact of this provision on state revenues is indeterminable and would depend on the fee set by the Behavioral Health Board. As of December 12, 2009, there were 1,640 mental health counselors licensed. The current fee for mental health counselors is \$50. Total revenue collected by the Behavioral Health Board in FY 2009 was \$78,348.

**Explanation of Local Expenditures:** (Revised) *Practice As or Use of Title: "Social Worker"*- A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

(Revised) *Dispensing of Controlled Substance*- A violation of this provision would, under current law, constitute a Class A misdemeanor.

**Explanation of Local Revenues:** (Revised) *Practice As or Use of Title: "Social Worker"*- If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

(Revised) *Dispensing of Controlled Substance*- A violation of this provision would, under current law, constitute a Class A misdemeanor.

**State Agencies Affected:** AG; PLA; DNR.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Marty Allain, Lisa Bentley, PLA; PLA website, *Indiana Handbook of Taxes, Revenues, and Appropriations*; December 7, 2009, State Staffing Report.

**Fiscal Analyst:** Chris Baker, 317-232-9851.